



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

THE AMERICAN LAW REGISTER

FOUNDED 1852

UNIVERSITY OF PENNSYLVANIA

DEPARTMENT OF LAW

VOL. { 53 O. S. }
 { 44 N. S. }

JULY, 1905.

No. 7.

THE LAW AND LAWYERS OF CHARLES DICKENS.¹

In selecting a subject for this address I found myself somewhat in the predicament of Solomon John Peterkin, who, having been selected by the family to write a book, and having surrounded himself with a supply of ink, pens, and paper, was puzzled to know what to write about. For one who is honored with an invitation to address the students of a law school is expected, I suppose, to speak upon a subject having at least some nominal connection with the law, while, if he attempts the discussion of a technical question, he exposes himself to the danger of having his theories dissected or his conclusions disproved in the classrooms on the morrow. Then it occurred to me that, perhaps, in your devotion to Bracton, the Year Books, and Coke on Littleton, you might be neglecting some of the more modern writers, who have been bold enough to borrow from Justinian the title of Novels for their books, which looks very much like what is called Unfair Trade Compe-

¹ An address read before the students of the Law School of the University of Pennsylvania on April 5, 1905, by John Marshall Gest, of the Philadelphia Bar.

tition. So, these literary pirates sometimes call their productions Fiction, though everyone knows that the real, genuine, original Fictions are the fictions of law, which Jeremy Bentham says are the most pernicious and basest sort of lying, while Blackstone says that, though at first they may startle the student, he will find them, on further consideration, to be highly beneficial and useful.

Now, you may learn a great deal of law in a very agreeable way by reading novels. Thus, in "Ten Thousand a Year" you find the old action of ejectment, with all its fictions and prolixities, fully described; the plot of "Felix Holt" turns upon a base fee, and I believe George Eliot obtained professional advice upon her book before it was published. In "Cæsar Birotteau" Balzac explains in detail the French law of bankruptcy; while in other books forged wills and murder trials of the most thrilling sort abound. Sometimes these legal novelists are not very accurate in their law, but that should only serve to stimulate the reader's criticism. Shakespeare's plays, as we all know, are crammed with legal allusions; and Sir Walter Scott, who was a lawyer by profession, and a well-read lawyer too, made good use of his legal learning. Nothing of the kind is more amusing than his account of the great case of *Peebles v. Planestanes* in "Redgauntlet;" while "Anne of Geierstein" is worth reading for the sake of the *Vehmgericht*.

But to-day we may be able to find enough in Dickens to occupy the time. Indeed, it makes little difference what subject is selected, provided we don't stick too closely to it. As Mrs. Squeers used to say to the boys when they labored under extraordinary ill usage, "It will be all the same a hundred years hence."

Now, after I had selected my subject, I found, in reading Mr. Birrell's interesting and I may say pathetic biography of Sir Frank Lockwood, that this distinguished and witty lawyer had written a lecture on "The Law and Lawyers of Pickwick," and I should be extremely loath, although I have not been able to find a copy, to attempt anything which might infringe on his copyright. To be sure, a subject like this is, in a sense, Tom Tiddler's ground, but I will respect

Lockwood's title by occupancy, though with regret, as "Pickwick," the early fruit of Dickens's genius, was his best, at least most characteristic, work.

I shall neither sketch the life of Dickens, nor attempt any criticism of his work; but it is well to recall a few important facts and dates. He was born February 7, 1812; he died June 9, 1870. He began writing his "Sketches by Boz" in 1835, at the age of twenty-three, and until the day of his death, thirty-five years after, delighted and astonished the readers of two continents with thirteen elaborate works and numerous shorter stories and sketches, introducing over five hundred characters, many of whom are, indeed, Household Words.

At the age of ten he was employed in a factory, pasting labels on blacking pots at six shillings a week, undergoing experiences which would have crushed a weaker spirit, as he said in later years, with "no advice, no counsel, no encouragement, no consolation, no support from anyone that I can call to mind, so help me God." His father was a prisoner for debt in the Marshalsea prison, and Dickens spent his Sundays there, getting the impressions which he reproduced so vividly in "Little Dorrit." At fifteen he entered the office of one Molloy, an attorney, in New Square, Lincoln's Inn, and, later, the office of Edward Blackmore, an attorney of Gray's Inn. Here he remained until November, 1828, receiving a salary of fifteen shillings a week. His experience, though short, must have been crowded. He saw the seamy side of the law, the Fleet Prison, Newgate, and the Marshalsea.

He doubtless slipped many a time into the Old Bailey and saw there tried many an Artful Dodger; that Old Bailey of which Lord Brampton says, in his "Reminiscences," "Its associations were enough to strike a chill of horror into you. It was the very cesspool for the offscourings of humanity." And Dickens had a wonderful memory for all these things. He used to say that he remembered his old home at Portsmouth, from which he was taken when two years old. This must be true, because he said it, and he ought to know. Like a good Churchman, *Credo quia*

impossible. At all events, he remembered everything worth remembering, and a great deal one would think worth forgetting, and everything he saw and heard reappeared, sometimes like a photograph, sometimes like a caricature, in his books. Then he studied shorthand, as he tells us in "David Copperfield," and reported in the Lord Chancellor's Court, then for the newspapers, then for two years he sat in Doctors' Commons, then at the age of nineteen entered the "gallery," where he stayed for four years more, with quick eye and ears and nimble fingers, answering in a sense Browning's question, "What hand and brain went ever paired?"

Such was his education and preparation for his career, which then began with his "Sketches by Boz," some of which are as good as anything he wrote in later life; and in 1836, at the age of twenty-four, "Pickwick" made him immortal, and has kept the whole world on a broad grin ever since.

I have said that no criticism of Dickens would be here attempted, but one thing must be said, because everybody else has said it, and it is really true, in speaking of the law and lawyers of Dickens, that Dickens saw too keenly the humorous side of life to portray it as an artist; he was a caricaturist. Life is mirrored in his pages, but the mirror was convex or warped, and he went up and down the world, holding it before everybody and everything. He held it before his own father, and the amused world beheld the foolish figure of Mr. Micawber; he held it before his mother, and the image appeared of Mrs. Nickleby; his friend, Leigh Hunt, became Harold Skimpole; Landor was changed to Boythorn; a family friend appeared as Miss Mowcher. So, with Dickens's reproduction of manners and institutions. He was sentimental and emotional, but his sentiment too often becomes mawkish; his pathos is strained and artificial; the best of his writings are marred too often by blank verse, while the plots of his stories are frequently awkward, involved, and unnatural.

He was, as I said, sentimental and emotional; he was sympathetic also. He saw and appreciated the evils of society as they existed in his day, but he lacked the con-

structive faculty of suggesting practical reforms. His ability consisted in exciting compassion for the poor and oppressed, scorn and contempt for the oppressor, and derision for the laws which, at the time he wrote, favored poverty and oppression, and were the wornout heritage of an earlier stage of society.

I repeat that in reading Dickens's description of the law and lawyers we must bear in mind that, first and last, his aim was to ridicule, satirize, and caricature all that he disliked and despised, and he saw much in the law and lawyers of England to dislike and despise. He was not, of course, an educated lawyer. I doubt very much if he ever read any law at all. He was not a reader, like Uriah Heep, whom he found "going through 'Tidd's Practice,' " a great, fat book, with his lank forefinger following the lines and making tracks along the page like a snail. Dickens's knowledge was not derived from the printed page, but from what he saw and heard. He was never called to the Bar, though I believe he ate his dinners in the Middle Temple. In the guise of the "Uncommercial Traveller" Dickens says, "I was uncommercially preparing for the Bar, which is done, as everybody knows, by having a frayed old gown put on, and, so decorated, bolting a bad dinner in a party of four, whereof each individual mistrusts the other three."

Dickens's practical experience of the law was decidedly unpleasant. In 1844 Vice-Chancellor Knight Bruce granted him an injunction against some literary pirates who published imitations of "Christmas Carol" and "Chuzzlewit." Although successful, he had to pay the costs, a boomerang which he might have considered very funny had it happened to another. When another case of piracy occurred he wrote to his counsel, Talfourd: "It is better to suffer a great wrong than to have recourse to the much greater wrong of the law. I shall not easily forget the expense and anxiety and horrible injustice of the 'Carol' case, wherein, in asserting the plainest right on earth, I was really treated as if I were the robber instead of the robbed." It was, doubtless, his own sentiments which he expressed in the "Battle of Life," which he wrote soon after.

"Nothing serious in life!" said Mr. Snitchey, of the law-firm of Snitchey & Craggs, as he peeped into his blue bag. "What do you call law?"

"A joke," replied the doctor.

"Did you ever go to law?" asked Mr. Snitchey, looking out of the blue bag.

"Never," returned the doctor.

"If you ever do," said Mr. Snitchey, "perhaps you'll alter that opinion."

Snitchey naturally took a professional view of the law.

"Take this smiling country as it stands. Think of the laws appertaining to real property; to the bequest and devise of real property; to the mortgage and redemption of real property; to leasehold, freehold, and copyhold estate; think," said Mr. Snitchey, with such great emotion that he actually smacked his lips, "of the complicated laws relating to title and proof of title, with all the contradictory precedents and numerous Acts of Parliament connected with them; think of the infinite number of ingenious and interminable Chancery suits to which this pleasant prospect may give rise, and acknowledge that there *is* a green spot in the scheme about us!"

"The one great principle of the English law," says Dickens in "Bleak House," "is to make business for itself. There is no other principle distinctly, certainly, and consistently maintained through all its narrow turnings. Viewed by this light, it becomes a coherent scheme, and not the monstrous maze the laity are apt to think it. Let them but once clearly perceive that its grand principle is to make business for itself, at their expense, and surely they will cease to grumble."

As Dickens viewed the law with profound contempt, so he regarded lawyers with scant favor. Most of the lawyers in his books are shysters, as we would call them, or narrow, mean, ignorant pettifoggers. His books are crowded with familiar specimens. We pass by the celebrated firm of Dodson & Fogg with sincere regret, for these "sharp practitioners" have been appropriated by Lockwood; but there are others. Here is Stryver, "the favourite at the Old

Bailey and eke at the Sessions," by whose efforts Darnay was acquitted: Stryver, "stout, loud, red, bluff, and free from any drawback of delicacy, a glib man, and an unscrupulous and a ready and a bold," and Sydney Carton, his jackal, idlest and most unpromising of men, who, at the last, by the transforming touch of the novelist, is "exempted out of the number of the rascabilitie of the popular."

Of most of such men the old verses are true:

"For fees to any form they mould a cause,
The worst has merits and the best has flaws;
Five guineas make a criminal to-day,
And ten to-morrow wipe the stain away."

Here is Jaggers, the criminal lawyer of "Great Expectations." With Pip we may check off in detail "his large head, his dark complexion, his deep-set eyes, his bushy black eyebrows, his large watchchain, his strong black dots of beard and whisker, and even the smell of scented soap on his great hand." Mr. Jaggers's office was a most dismal place, and there were some odd objects that you would not expect to see, such as an old rusty pistol, a sword, strange-looking boxes, mementos of clients dead and gone, and on a shelf two dreadful casts of faces peculiarly swollen and twitchy about the nose. "These are two celebrated ones," as Wemmick, Jaggers's satellite, explained to Pip. "Famous clients of ours that got us a world of credit. This cast was made in Newgate, directly after he was taken down. You had a particular fancy for me, hadn't you, Old Artful?" Jaggers himself sat in a deadly black horsehair chair, with the plaster casts perched above him, and treated his clients like criminals, as in fact they were.

Here is Mr. Tulkinghorn, the sly, unscrupulous old family solicitor, "the steward of the legal mysteries, the butler of the legal cellar of the Dedlocks, surrounded by a halo of family confidences, of which he is the silent depository." He was of the old school, and wore knee-breeches, tied with ribbons, and gaiters. He was a hard-grained man, close, dry, silent, with a priceless bin of port in some artful cellar under his chambers in Lincoln's Inn Field, where he sits alone after dinner to enjoy his wine, with the Alle-

gory in a Roman helmet sprawling on the painted ceiling above him, while around about are old-fashioned mahogany and horsehair chairs, and obsolete tables with spindle legs.

There are plenty of lawyers in "Bleak House" besides Tulkinghorn. Conversation Kenge, of Kenge & Carboy, Lincoln's Inn, was a portly, important looking gentleman, dressed all in black, with a white cravat, large gold watch-seals, a pair of gold eyeglasses, and a large seal ring upon his little finger. Mr. Guppy was employed in Kenge & Carboy's office, where he learned enough to file his declaration of love to Esther "without prejudice."

Mr. Vholes was another solicitor in *Jarndyce v. Jarndyce*. He was a sallow man, with pinched lips, that looked as if they were cold, a red eruption upon his face, tall and thin, high shouldered and stooping, always dressed in black, black gloved, and buttoned to the chin. Mr. Vholes used to say that when a client of his laid down a principle that was not of an immoral nature it devolved upon him to carry it out; the ethical force of which was rather marred by his explanation that by immoral he meant illegal.

But, of all Dickens's disreputable lawyers, Sampson Brass, Daniel Quilp's attorney, was probably the lowest. He was a tall, meagre man, with a nose like a wen, a protruding forehead, retreating eyes, and hair of a deep red, with a cringing manner and a very harsh voice—his face being, indeed, "one of nature's beacons, warning off those who navigated the shoals and breakers of the World, or of that dangerous strait, the Law." But, as he was wont to boast, he was a gentleman—by Act of Parliament. "I maintain the title by the annual payment of twelve pounds sterling for a certificate. I am not one of your writers of books, or painters of pictures, who assume a station that the laws of their country don't recognize. If any man brings an action against me he must describe me as a gentleman, or his action is null and void." Well might the words of Sir Thomas Smith apply, "Gentlemen bee made good cheape in England."

But even an Act of Parliament itself could not, for several reasons, have made a gentleman of Sampson's sister

Sally. Lord Coke lays it down that women cannot be attorneys, otherwise, no doubt, Miss Sally Brass would have taken out her certificate. "This Amazon at law was a lady of thirty-five or thereabouts, of a gaunt and bony figure and a resolute bearing, which, if it repressed the softer emotions of love and kept admirers at a distance, certainly inspired a feeling akin to awe in the breasts of those male strangers who had the happiness to approach her." In face she bore a striking resemblance to her brother Sampson. "In complexion she was sallow, rather a dirty sallow, but this hue was agreeably relieved by the healthy glow which mantled in the extreme tip of her laughing nose. Her voice was exceedingly impressive, deep and rich in quality, and, once heard, not easily forgotten. Her usual dress was a green gown, in color not unlike the curtain of the office window, made tight to the figure, while her head was invariably ornamented with a brown gauze scarf, like the wing of the fabled vampire. She was born and bred to law, and even in childhood was noted for her exquisite manner of putting an execution into her doll's house and taking an exact inventory of the chairs and tables." When Shakespeare portrayed his feminine lawyer he gave us Portia; when Dickens tried his hand he gave us Sally Brass. The girl graduates of the present time, the women moulded to the fuller day, with their "star sisters answering under crescent brows," have thus their choice of ideals.

When Dickens began first to observe, and then to write about what he saw, it was nominally the nineteenth century; but, so far as the law was concerned, the eighteenth century lasted until the Reform Act of 1832. The laws, a century ago, were almost mediæval, and the trouble was that judges and lawyers, for the most part, were satisfied with them. Not all, by any means. Here and there a voice cried in the wilderness, and men like Bentham marched around Jericho, blowing their rams' horns. But it was not the first blast, nor the second, that levelled the walls. Reform came very slowly indeed, until the middle of the century; then the walls fell with a crash. There were not a few defects in the law against which Dickens

shot his arrows of abuse and ridicule, and some of these we shall now recall.

In the beginning of the last century most crimes were felonies, and most felonies were capital. Over two hundred offences were punishable with death, especially those which involved a confusion of those great pronouns *meum* and *tuum*, as Lord Coke calls them. Under the Shoplifting Act, for example, to which Dickens refers in "*Barnaby Rudge*," stealing in a shop to the value of five shillings was a capital offence. Stealing in a dwelling-house to the value of forty shillings was likewise capital, and the endeavors of men like Erskine and Romilly to mitigate the severity of such laws were frustrated by Lord Eldon. That great but narrow-minded man might have profited by these words of Lord Coke (not generally considered as a leader of reform), who said in the "*Epilogue to the Third Institute*," "What a lamentable case it is to see so many Christian men and women strangled on that cursed tree of the gallows, inso-much as if, in a large field, a man might see together all the Christians, that but in one year throughout England, come to that untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed for pity and compassion."

When Dickens began his career things were about as bad as they were in the latter part of the eighteenth century, the date of "*The Tale of Two Cities*." "The forger was put to death; the utterer of a bad note was put to death; the unlawful opener of a letter was put to death; the coiner of a bad shilling was put to death. Not that it did the least good in the way of prevention, but it cleared off, as to this world, the trouble of each particular case, and left nothing else connected with it to be looked after." And then the heads of the victims used to be hung up at Temple Bar, as Judas Maccabeus hung Nicanor's head upon the tower as an evident and manifest sign unto all.

In one of the early "*Sketches by Boz*" Dickens describes a visit to Newgate. In the prison chapel was the condemned pew, in which the wretches who were condemned to death listened to their own funeral sermon on the Sunday before

their execution; while at one time, not then far distant, their coffins, with a grimly terrific humor, were placed in the pew beside them. Let us hope, said he, that the increase of civilization and humanity, which abolished this frightful and degrading custom, may extend itself to other usages equally barbarous.

Executions were then public, and, up to at least recent times, were attended by people of the first fashion. Boswell, Johnson's biographer, had a great taste for that sort of thing. On one occasion, he records, he saw six executed at Tyburn; on another, fifteen at Newgate. The solemn procession to Tyburn had been abrogated in 1783, much to Boswell's disgust, and Dr. Johnson observed: "The age is running mad. Men are to be hanged in a new way. The old method was most satisfactory to all parties; the public was gratified by a procession, the criminal was supported by it. Why is all this to be swept away?" The celebrated George Selwyn never missed a hanging without some legitimate excuse. When Hackman was executed for the murder of Miss Ray, the Earl of Carlisle wrote Selwyn an account of it, and added, "Everybody inquired after you." Selwyn made a trip to Paris to see Damien broken on the wheel for attempting to assassinate Louis XV. He displayed so much interest that he was asked by a French nobleman if he were a hangman. "No, sir," was his reply, "I have not that honor; I am only an amateur."

Charles Lamb wrote to a friend in Paris: "Have you seen a man guillotined yet? Is it as good as hanging?"

But times and tastes change. In 1849 Dickens saw the two Mannings, husband and wife, executed on the wall of Horsemonger Lane Jail, and, like a true-born Englishman, sat down quickly and wrote a letter to the *Times*, advocating a change which was finally effected, I believe, in 1868.

As you well know, the goods of a stranger upon the demised premises are, with certain exceptions, liable to distress for rent. When Tommy Traddles was lodging with the Micawbers one of Micawber's financial storms broke, and forthwith Micawber wrote to Copperfield: "The

present communication is penned within the personal range (I cannot call it society) of an individual in a state closely bordering on intoxication employed by a broker. That individual is in legal possession of the premises, under a distress for rent. His inventory includes not only the chattels and effects of every description belonging to the undersigned, as yearly tenant of this habitation, but also those appertaining to Mr. Thomas Traddles, lodger, a member of the Honourable Society of the Inner Temple."

Harold Skimpole had an amusing experience with a landlord's warrant, under which his furniture was distrained upon—at least amusing to him. "The oddity of the thing," said Mr. Skimpole, with a quickened sense of the ludicrous, "is that my chairs and tables were not paid for, and yet my landlord walks off with them as composedly as possible! Now that seems droll! There is something grotesque in it. The chair and table merchant never engaged to pay my landlord my rent. Why should my landlord quarrel with him? His reasoning seems defective."

In "Oliver Twist" Dickens notices one of the common law incidents of the marriage relation. Mrs. Bumble, the helpmeet of the celebrated beadle, had unlawfully possessed herself of a certain gold locket and ring taken from Oliver's mother as she lay a-dying in the workhouse. When taxed with the crime Mr. Bumble, following the example of our common ancestor, endeavored to shift the responsibility. "It was all Mrs. Bumble. She *would* do it," urged Mr. Bumble, first looking round to ascertain that his partner had left the room.

"That is no excuse," replied Mr. Brownlow. "You were present on the occasion of the destruction of these trinkets, and, indeed, are the more guilty of the two in the eye of the law; for, indeed, the law supposes that your wife acts under your direction."

"If the law supposes that," said Mr. Bumble, squeezing his hat emphatically in both hands, "the law is a ass—a idiot. If that's the eye of the law, the law's a bachelor; and the worst I wish the law is, that his eye may be opened by experience."

Dickens had doubtless seen many coroners' inquests, and he reports several. There was that held upon the supposed body of John Harmon, at the Six Jolly Fellowship Porters, in "Our Mutual Friend," when Jesse Hexam, who had such remarkable luck in finding dead bodies, was the star witness. When Nemo died, in "Bleak House," the inquest was also held at a public house, as seemed to be the custom. Indeed, it was said the coroner frequents more public houses than any man alive. Dickens describes the proceedings at the Sol's Arms very graphically, where Little Swills, the comic vocalist, looks on in order to reproduce the scene at the Harmonic meeting in the evening. Little Jo is the only mourner for the dead, except Lady Dedlock, whom he afterwards guides to her lover's grave in Tom-all-Alone's. She asks the waif of the street if it is consecrated ground, perhaps fearing that, if a suicide, his body would receive outcast burial. "Is it blessed?" said she. "I'm blest if I know," said Jo. "Blest? I should think it was t'othered myself. But I don't know. nothink!"

When Daniel Quilp was found drowned, and the coroner's jury found it a case of suicide, he was buried with a stake through his heart, in the centre of four lonely roads. This was a very old custom in England, but there seems to be no legal authority for it. Perhaps the place was so selected that, by the continual passage of the living, the burial-place might be trodden down and forgotten. It has been suggested that the stake was driven through the heart to keep the ghost from walking. The old Canon Law, I believe, simply prohibited the performance of the burial office over the bodies of those who committed suicide or were deprived of life as a penalty for crime,¹ and if you will borrow a Prayer-Book you will see this retained in the Rubric of the Burial Service of the Church of England.

The origin of the cross-roads burial is obscure and worth

¹ "Plasuit ut hii qui sibi ipsis voluntarie . . . inferunt mortem nulla pro illis in oblatione commemoratio fiat neque cum psalmis ad sepulturam eorum cadavera deducantur. . . Similiter et de his placuit fieri qui pro suis sceleribus moriuntur."—*Decretum Causa xxiii, Quest V, c. 12. Gibson's Codex, 450.*

“a look into the antiquities, than which nothing is more venerable, profitable, and pleasant.” Some think it dates from so late a period as 1600, though this seems improbable. But the custom was abolished in 1823 by 4 Geo. IV, c. 52, which shows that the story of “Old Curiosity Shop” must antedate that time. “Bleak House” was subsequent, and so was “Nicholas Nickleby,” in which Ralph Nickleby, as he goes home to hang himself, paused to look at the grave of a suicide in whose case he himself had been of the jury.

In “Hard Times” Dickens complains, and justly, of the inequality of the law in England, which allowed divorce to the rich and forbade it to the poor. Stephen Blackpool, who found he had drawn not merely a blank in the matrimonial lottery, but the Black Spot itself, when he took Mrs. Blackpool for better or worse, applied to Bounderby for advice how to be rid of her. “It costs money,” said Bounderby, “a mint of money. You’d have to go to Doctors’ Commons with a suit, and you’d have to go to a court of Common Law with a suit, and you’d have to go to the House of Lords with a suit, and you’d have to get an Act of Parliament to enable you to marry again, and it would cost you (if it was a case of very plain sailing) I suppose from a thousand to fifteen hundred pounds: perhaps twice the money.” Mr. Bounderby, who afterwards married Gradgrind’s daughter, found himself in a like fix: his wife leaves him, and he sends her paraphernalia after her. “I am Josiah Bounderby, and I had my bringing up. She’s the daughter of Tom Gradgrind, and she had her bringing up, and the two horses wouldn’t pull together.”

Bounderby probably never read the Apocrypha. If he had, he might have approved the wisdom of the Son of Sirach, who said, “Of woman came the beginning of sin, and through her we all die. If she go not as thou wouldest have her, cut her off from thy flesh, and give her a bill of divorce, and let her go.”

Up to Justinian’s time divorce might take place by mutual consent, but it is said that only one took advantage of this liberty for five hundred years. The laxity of morals which marked the decadence of Rome followed, and was caused

by the idle luxury of the later period, producing a state of things which will soon be repeated with us unless some reform is effected. To elevate our marriage institutions by tinkering with our divorce laws is like putting a plaster on a cancer. The evil is not superficial, but internal, a very corruption of the blood.

But, as Lord Coke would say, let us now return to Dickens, for I know you will gladly hear him.

By the common law an ordinary suit for a debt was begun by a *capias ad respondendum*, under which the debtor was arrested and obliged to give special bail for his appearance. If a judgment was recovered against him, and he was unable to pay the debt, or refused, as Mr. Pickwick did, to pay it, he was arrested on a *capias ad satisfaciendum* and committed to a prison, such as the Fleet or the Marshalsea, until the debt was paid, which might mean imprisonment for life, in small, damp, crowded rooms, without beds. Pickwick mistook the underground rooms of the poor prisoners for coal cellars. The prisoner or his friends, if they had means enough, might, indeed, pay for better accommodations. Pickwick made such arrangements in the Fleet, and Dorrit had his own rooms at the Marshalsea, supported by Amy.

The law was gradually reformed in England by various statutes from 1844 to 1846, and imprisonment was finally abolished in 1869. In Pennsylvania the Act of July 12, 1842, abolished arrest in civil suits, certain cases excepted. These changes were not effected without great effort. Imprisonment for debt was considered proper and even necessary, although unknown to the early common law. Richard Steele, in No. 172 of the *Spectator*, says it is an honorable thing for a lawyer to imprison the careless debtor. There is hardly a novel of Dickens, or of Thackeray too, where someone is not imprisoned for debt. The sheriff's officer first took the defendant to a sponging-house, where he was temporarily detained while he or his friends raised the money. You may remember how Rawdon Crawley was seized at a most inopportune time, and taken to Mr. Moss's in Cursitor Street, Chancery Lane, for one hundred and

sixty-six, six and eight pence, at the suit of Mr. Nathan, and, likewise, Mr. Watkins Tottle was suddenly arrested, and for a mere trifle of thirty-seven pounds found himself an inmate of the establishment of Mr. Solomon Jacobs, also of Cursitor Street, Chancery Lane.

Why they called these places sponging-houses I do not know, unless because they squeezed the debtors in them. Harold Skimpole was "took for debt," and a goodly proportion of the characters in "Pickwick," from Pickwick himself to Jingle. Indeed, there was quite a family reunion in the Fleet, and if Pickwick were not tabooed to me, we might speak thereof at length. But Micawber and Dorrit remain.

Dickens knew, as a lad, what it was to be took for debt, for his father underwent that painful experience, and it was in the King's Bench Prison that Micawber uttered his famous warning that, if a man had twenty pounds a year for his income, and spent nineteen pounds, nineteen shillings, and six pence, he would be happy, but that if he spent twenty pounds one, he would be miserable. There was an insolvent debtors' act then, of which Micawber took advantage, and, in the meantime, enjoyed himself hugely in composing a petition to Parliament praying for an alteration in the law of imprisonment for debt.

But it was in "Little Dorrit" that Dickens described at large life in the debtors' prison, as the whole story centres about it. The Marshalsea was originally the prison of the Court of the King's Steward and Marshal, having jurisdiction of cases arising within a space of twelve miles around the King's Court, "a mere Palace Court jurisdiction," as Mr. Rugg, Arthur Clennam's professional adviser, remarked as he recommended that Clennam should be arrested by preference on a writ from the Superior Court, and be taken to the King's Bench Prison. But Clennam preferred to go to the Marshalsea, because he had there known Little Dorrit, the child of the Marshalsea.

William Dorrit was the Father of the Marshalsea, and proud of the title. He had been there so long that he regarded it as his own. He was the oldest inhabitant, and

all the newcomers were presented to him at what resembled a State Drawing Room; and he was really happier there than when a turn of fortune's wheel made him wealthy and opened the prison gate. "It's freedom," said one of the residents. "Elsewhere people are restless, worried, hurried about, anxious. Nothing of the kind here. We have done all that; we know the worst of it; we have got to the bottom; we can't fall, and what have we found? Peace. That's the word for it. Peace." There is a good deal of philosophy in that. But Dorrit did not think he had got to the bottom. There was the workhouse, where old Nandy lived. The Father of the Marshalsea was disgusted with Amy because she walked with Nandy in the street. "The Workhouse," said he, "the *Union*! No privacy, no visitors, no station, no respect. Most deplorable." It was a great day in the Marshalsea when old Dorrit left it and started on his travels to Italy and Switzerland, but at last his mind fails him, and wanders back to the old days when he was the first in that humble society.

Dickens as a young man was a reporter in Doctors' Commons, and in "David Copperfield" has a good deal to say about the Ecclesiastical Courts. Copperfield entered the office of Spenlow & Jorkins, the distinguished proctors, and Steerforth gave him a lucid explanation. "A proctor," he said, "is a sort of monkish attorney. I can tell you best what he is by telling you what Doctors' Commons is. It's a little, out-of-the-way place where they administer what is called ecclesiastical law, and play all kinds of tricks with obsolete old monsters of Acts of Parliament, which three-fourths of the world know nothing about, and the other fourth supposes to have been dug up in a fossil state in the days of the Edwards. It's a place that has a monopoly in suits about people's wills, and people's marriages, and disputes among ships and boats." Spenlow was a little, light-haired gentleman, with undeniable boots and the stiffest of white cravats and shirt collars. "He was buttoned up mighty trim and tight, and must have taken a great deal of pains with his whiskers, and was got up with such care that he could hardly bend himself, and, when he turned to

glance at some papers on his desk, was obliged to move his whole body from the bottom of his spine, like Punch."

In "Sketches by Boz" there is an amusing account of Doctors' Commons, and the case of "The Office of the Judge promoted by *Bumple v. Sludberry*" in the Court of Arches. This was a brawling case; that is, Sludberry and Bumple had a falling out at a vestry meeting, by which Sludberry, the aggressor, brought himself within the jurisdiction of the court, who, having heard the evidence, pronounced upon Sludberry the awful sentence of excommunication for a fortnight and payment of costs. Upon which Sludberry, a red-faced, sly-looking gingerbeer seller, asked the court to take off the costs and excommunicate him for the rest of his life, as he never went to church at all.

David Copperfield tells of another case, where a baker was excommunicated for six weeks and sentenced in no end of costs for objecting in a vestry to a paving rate; and still another excommunication case, which arose out of a scuffle between two church wardens, one of whom was alleged to have pushed the other against a pump, the handle of which projected into a school-house, which school-house was under a gable of the church roof, thus making the push an ecclesiastical offence.

Another case of Spenlow's was a suit for annulment of marriage. The husband, whose name was Thomas Benjamin, took out his marriage license as Thomas only, suppressing the Benjamin in case he should not find himself as comfortable as he expected. *Not* finding himself as comfortable as he expected, he now came forward and declared that his name was Thomas Benjamin, and, therefore, he was not married at all, which the court confirmed to his great satisfaction.

But now all this miserable business is done away with in England, and the Ecclesiastical Courts deal only with clergymen of the Established Church in their professional character. Let us be thankful that, in our country, we have been saved all this.

We will now look at the picture of the Court of Chancery which Dickens gives us in "Bleak House," a novel written

for the purpose of attacking that court, as "Nicholas Nickleby" was written to expose the Yorkshire schools, and "Oliver Twist" to lay bare the English Poor Laws and the horrors of crime.

A bill in equity, in those days, was not the innocent document which with us bears the name, but a much more formidable instrument. In the first place, it was very lengthy. After the caption and names of the parties came the stating part, in which the plaintiff stated the facts of his case; then a general charge of confederacy against the defendants and divers other persons then unknown. This was originally inserted in order to lay ground for amendment by adding other parties to the bill, but soon became a mere form. The next was the charging part of the bill, in which were set out anticipated defences, which were then denied or avoided in order to ground interrogatories. Then, after an averment that the plaintiff had no remedy at law, came the interrogatories propounded to the defendant, with prayers for relief and process. As the costs were in proportion to the length of the pleadings, it will be readily seen that the solicitors had every temptation to prolixity. Thus, a witness testified before the Chancery Commission of 1852: "If I draw a document of 120 folios, I get £6, and if I compress that into 30 folios I get only 30 shillings. In fact the worse the business is done the better it is paid for." A folio being, as I believe, fifteen lines of six words each.²

It frequently happened that the defendant's answer rendered it necessary or advisable to amend the bill, adding fresh interrogatories which called for a further answer. Sometimes the plaintiff would designedly refrain from making his bill full in the first instance and file what was called a fishing bill, and then, on the answer coming in, would avail himself of its averments to frame his amendment. This was called "*scraping the defendant's conscience*."³

As the defendant very frequently filed a cross-bill against

² Testimony, Henry Lake, First Report, Chancery Commission, 1852, Appendix A, page 180.

³ Testimony, James Lowe, Chancery Commission, 1826, pages 165, 166.

the plaintiff to scrape *his* conscience, and there were continual opportunities for exceptions, and references to a master and appeals, it will easily be seen that by the time the parties' consciences had become thoroughly scraped, the proceedings had become unconscionably complicated.

Again, the rules of the court required that every person having any interest, no matter how theoretical or contingent, must be made a party, and this added enormously to the expense, and also to the vexation of suitors. Many a man whose interest was as a practical matter nothing, would be made a defendant, and, fearing to disregard the suit, would be obliged to employ counsel. Forster, Dickens's biographer, mentions a case of a legacy of three hundred pounds charged on a farm worth twelve hundred pounds. There was but one defendant in reality, but seventeen according to the technical rule, and, after two years, it was discovered that an eighteenth should be added, and the suit begun *de novo*, after costs had been incurred of over eight hundred pounds. This case Dickens worked up in *Bleak House* as the story of Gridley, "the man from Shropshire."

The testimony in a Chancery case was not oral, but taken in writing by commissioners, or examiners. The party examining prepared his questions in writing, and the other side cross-examined, if he chose, and questions and cross-questions were propounded to the witnesses by the examiner. This method was most unsatisfactory, tedious, and expensive. A witness before the Chancery Commission testified that in one case, where a bill had been filed against the directors of a bank to hold them liable for its debts, the expense of obtaining the testimony of one witness was over eight hundred pounds. The witness observed that "the tremendous expense expedited a compromise."⁴

Then every party had to take office copies of every paper filed, or at least pay for them, on penalty of incurring the displeasure of the officials.

Then the delay caused by appeals was something of which

⁴ Testimony, S. B. Toller, Third Report, Chancery Commission, 1856, page 38.

we can have little idea at this time. In 1811 a Scotch solicitor testified before the committee on delays of suits in Chancery: "I know that there has been a great increase of appeals, and I know that appeals are entered, many of them, only for the purposes of delay. There was a remarkable instance of it this session, to prevent a person paying one thousand pounds into court; it was in the House (of Lords) seven years. I had orders to withdraw the appeal as soon as it should be called on, and when it came to the last moment I took it away upon paying the costs."⁵

In 1824 a witness before the Chancery Commission spoke of the "heart-sickening delays" in appeals, and mentioned one important case, appealed from the Master of the Rolls to the Chancellor, which remained unheard for nearly six years.⁶

Well might poor, crazy Miss Flite say so often: "I expect a judgment. Shortly. On the day of Judgment."

Litigated or contentious suits we all expect to be somewhat protracted; but when all hands simply want their rights determined by the court it seems cruel to prohibit them. Yet this was what the Court of Chancery did by making no distinction between contentious and merely administrative business. The disputes which arise over the interpretation of wills, the settlement of accounts, and, in short, the thousand and one things which our Orphans' Court attends to every month, would, in England, under the old practice, be the subjects of bills in equity, with all their delay, expense, and vexation of spirit, as, for example, where a trustee filed a bill merely to obtain the direction of the court in the execution of the trust, or to have the terms of an obscure will construed by the court, or where a creditor was required to make formal proof of his claim: all these proceedings assumed the cumbrous and expensive character of hostile suits.⁷

⁵ Testimony, James Chalmers, Chancery Commission, June 18, 1811, page 24.

⁶ Testimony, John Forster, Chancery Commission, 1826, Appendix A, page 302.

⁷ Chancery Commission, First Report, 1852, page 10.

In 1855 it was said before the Chancery Commission that it took the registrar six months merely to settle the decree in the settlement of an intestate estate where some of the children had been advanced. It only required somebody to do it "who understood figures," but there was "nothing that any man of business might not settle in two or three hours."⁸

Then when the decision of the Chancery suit involved a preliminary determination of the legal rights of the parties, the Chancellor generally considered himself bound to direct an issue to a court of law, or take the opinion of the law judges. He was concluded to be sure by neither, but took this course to assist his conscience, and it need hardly be said that it was a proceeding which did not speed the cause nor lessen its expense.

In one case, where the contest involved the determination of who were the next of kin, the Master of the Rolls heard the case for three days, and then directed an issue. The case was tried for two days, and then the Master of the Rolls, dissatisfied with the verdict, directed a new trial. The Master of the Rolls was again dissatisfied, but no further trial was awarded, for the very simple reason that the fund of five thousand pounds was just sufficient to pay the costs.⁹

How Bentham lashed the whole system. "Equity!" he exclaims. "Equity! It is a term of derision, a cruel mockery. Is it a remedy? It sweetens like sugar of lead; it lubricates and soothes like oil of vitriol." And in another place he says, "The parties, unheard of and unthought of, pay their way through the offices like half-starved flies crawling through a row of spiders."

The Court of Chancery, in some of the colonies, was even worse, if possible. According to Parkes's "History of the Court of Chancery"—I have not seen the report of the Parliamentary Commission at first hand—the Court of Chan-

⁸ Testimony, R. B. Follett, Chancery Commission, Third Report, 1856, page 92.

⁹ Testimony of Joseph Leech, Chancery Commission, 1852, Appendix A, page 7.

cery in the island of Montserrat, West Indies, had several times been presented as a public nuisance; and, he says, "the tornado which periodically interrupts the sittings of the West India Courts of Chancery is the only temporary relief of the islanders from the visitation of equity."

A dishonest trustee sometimes used these delays as an engine of fraud. He would say, for example, to a minor coming of age: "There is a difficulty in this case, and we must get the direction of the court. If we go formally into court you will have some time to wait, but if you take the accounts as they are you will get so much immediately." Naturally, the young man would take what he could, rather than spend years in Chancery trying to get more.¹⁰

The pages of "Bleak House" do not disclose the details of the great case of *Jarndyce v. Jarndyce*, although, as the book was professedly written to show up the iniquities of the Court of Chancery, and is spun out to more than a thousand pages, surely a few might have been spared to give the reader a definite idea of what the case was about. It does not appear, however, that the question was how the trusts under the *Jarndyce* will were to be administered, and, while the costs were steadily increasing, the value of the estate was steadily decreasing. "It was a street of perishing, blind houses, and their eyes stoned out, without a pane of glass, without so much as a window frame, with the bare blank shutters tumbling from their hinges, and the iron rails peeling away in flakes of rust, the chimneys sinking in; the stone steps to every door (and every door might be Death's Door) turning stagnant green." Meanwhile, the legatees were reduced to poverty, and everybody had to have or pay for copies of cartloads of papers, and all hands went down the middle and up again, through such an infernal country dance of costs and fees and nonsense and corruption as was never dreamed of in the widest visions of a Witch's Sabbath. "And nothing ever ends. And we can't get out of the suit on any terms, for we are made

¹⁰ Testimony, John Bell, Chancery Commission, 1826, Appendix A, page 252.

parties to it, and must be parties to it, whether we like it or not."

So Tom Jarndyce committed suicide from despair. "For," said he, "it's being roasted at a slow fire, it's being stung to death by single bees, it's going mad by grains."

So Gridley, the ruined suitor, dies from sheer exhaustion. Meanwhile, the Lord High Chancellor, sitting in the very heart of the London fog, hears the interminable case, term after term, until a later will is discovered among Krook's old rubbish, and the suit collapses, just as the entire property is eaten up in costs, leaving nothing behind but what Conversation Kenge called a Monument of Chancery Practice.

All these evils of Chancery were well known, and had been exposed over and over again. But where the Blue Books, in which the evidence is contained, find one reader, Dickens's "Bleak House" will find a myriad. Even Parkes's "History of the Court of Chancery," one of the most interesting law-books ever written, does not attract the casual reader. It is a pity, therefore, not to put too fine a point on it, as Snagsby would say, that Dickens can hardly be said to have been quite fair in "Bleak House," for at the very time it was written the Court of Chancery had been radically changed by an Act of Parliament, of which Dickens takes no notice whatever. "Bleak House" was published in monthly numbers, from March, 1852, to September, 1853, and its preface is dated August, 1853, while, strange to say, the Acts of 15 and 16 Vict., passed July 1, 1852, c. 86 and 87, made most important alterations in the method of taking evidence, substituted printed bills for engrossed bills, simplified rules as to joinder of parties, gave the Chancellor full power to determine questions of law, substituted salaries for fees, and abolished many useless expenses and offices. These acts substantially reformed the court, though it continued its separate existence until the Judicature Act of 1873, when the courts were consolidated, and (to notice one important change) it was provided that in case of any conflict between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity

should prevail.¹¹ This principle, we are proud to say, has been recognized in Pennsylvania from the earliest times, and in *Pollard v. Shaffer*,¹² our leading case upon the subject, Chief-Justice McKean said in terms, "Equity is part of the law of Pennsylvania." The way in which our peculiar system was developed is extremely interesting, and every student should read not only Laussat's early essay on the subject, but also Mr. Fisher's article on the "Administration of Equity, through Common Law Forms," in 1 *Law Quarterly Review*, 455.

Yet, in his preface to "Bleak House," in August, 1853, Dickens wrote, "As it is wholesome that the public should know what has been doing, and still is doing, in this connection, I mention here that everything set forth in these pages concerning the Court of Chancery is substantially true, and within the truth."

If Dickens really intended that his readers should know the truth he should have mentioned the Act of 1852, and he certainly should have known of this act, as the Parliamentary Commission which gave rise to it could hardly have escaped his attention. This commission, appointed in 1850, was headed by Romilly, then Attorney-General, and the bill suggested by it was presented by Lord St. Leonards and approved by Lord Lyndhurst. Dickens, therefore, did not kill the Chancery snake, but only jumped on it after it was dead.

I have thus passed over in a very cursory and digressive manner some of the Lawyers, and something of the Law, as portrayed by Charles Dickens. Did time permit it might be interesting to speak also of other like topics, such as the Patent Laws, of his views as to the English Poor Laws as found in "Oliver Twist" and the "Uncommercial Traveller," and what he has to say of prisons and penal systems, of solitary confinement, and his criticisms of our Philadelphia penitentiary.

There are many interesting trials in Dickens. Everyone

¹¹ *Pugh v. Heath*, 7 App. Cases, 237.

¹² 1 Dallas, 210 (1787).

thinks at once of the most celebrated, *Bardell v. Pickwick*, but there are many others. Read the trial of Darnay for treason in the "Tale of Two Cities," and his trials in Paris during the Terror; the trials of the Artful Dodger and of Fagin in "Oliver Twist," Kit's trial at the Old Bailey in the "Old Curiosity Shop," and the death sentence of Magwitch in "Great Expectations." And in that one of Dr. Marigold's Prescriptions, called "To be Taken with a Grain of Salt," there is a description of a murder trial combined with a very good ghost story.

Then, too, Dickens often lingers over his descriptions of the Inns of Court, dear to every American lawyer's memory or imagination, recalling in their very names the associations of centuries of legal history.

These and sundry other matters of great importance I pass over with dry foot, and leave the learned and judicious reader to his own judgment thereof. But anyone who will read Dickens's books, with these things in mind, will find them as interesting as novels.

John Marshall Gest.